

APPEAL NO. 021914
FILED SEPTEMBER 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 26, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not sustain a compensable injury on or about _____, and that the claimant has not had disability. The claimant appealed, and the respondent (self-insured) responded.

DECISION

The hearing officer's decision is affirmed.

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10) and that he had disability as defined by Section 401.011(16). Although the hearing officer found that the claimant had an accident at work on _____, she was not persuaded that the claimant sustained an injury, by way of an aggravation of a preexisting condition or otherwise, as a result of that accident. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination that the claimant did not sustain a compensable injury is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Since the hearing officer determined that the claimant did not sustain a compensable injury on _____, the claimant would not have disability, as defined by Section 401.011(16), as a result of that claimed injury.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

DISSENTING OPINION:

I respectfully dissent and would reverse and render in part and reverse and remand in part.

It defies common sense to characterize back pain following a fairly dramatic slip and fall (which the hearing officer obviously believed occurred) as a "recurrence of symptoms". The evidence from the doctor indicates that his fall exacerbated his previous condition. This would further be demonstrated by the fact that the claimant was able to work and then thereafter not able to work. He had been certified to have reached MMI from his 1998 injury. It is especially hard to characterize the current lumbar problems as a "mere recurrence of symptoms" given the dearth of medical records establishing what the prior injury was.

Second, the claimant made a prima facie case of injury and disability by his testimony and medical evidence. He need not also show that there was some subtle additional shifting of a particular disc (and, indeed, could not show that because further testing was denied by the carrier) to make his case of aggravation or exacerbation. The burden shifted to the carrier to demonstrate that any preexisting (and in this record, somewhat undefined) "condition" was the sole cause of the claimant's out-of-work status after _____. The hearing officer did not shift the burden of proof and committed legal as well as evidentiary error.

I would reverse and render the decision that the claimant sustained a compensable back injury on _____, and remand for consideration of disability.

Susan M. Kelley
Appeals Judge